

**RIGHT OF WAY
ENCROACHMENT AGREEMENT**
(COMMERCIAL)

THIS AGREEMENT is made and entered into by and between the City of Fort Worth, a home rule municipal corporation of Tarrant County, Texas ("**City**"), acting herein by and through its duly authorized City Manager, its duly authorized Assistant City Manager or Planning and Development Department Director, and [redacted] [full legal name], a [redacted] [type of entity] "**Licensee**", acting herein by and through its duly authorized [redacted] [title], the owner of the real property located at [redacted], Fort Worth, Texas 76[redacted] ("**Property**").

RECITALS

WHEREAS, Licensee is the owner of certain real property situated in the City of Fort Worth, Tarrant County, Texas, more particularly described in the attached **Legal Description** of the Property; and

WHEREAS, the City has a street, alley, sidewalk, and/or other public right-of-way (individually or collectively, the "**Public Right-of-Way**") adjacent to the Property as shown on the map attached to this Agreement as **Exhibit "A"** and incorporated herein for all purposes; and

WHEREAS, Licensee desires to construct/place and maintain certain improvements which will encroach onto the Public Right-of-Way; and

WHEREAS, City will allow the encroachment under the terms and conditions as set forth in this Agreement to accommodate the needs of the Licensee,

NOW, THEREFORE, the City and Licensee agree as follows:

AGREEMENT

1.

City, in consideration of the payment by Licensee of the fee set out below and covenants and agreements hereinafter contained, to be kept and performed by Licensee, hereby grants permission to Licensee to encroach upon, use and/or occupy portions of the space under, on, and/or above the City's Public Right-of-Way to construct/install and/or allow to remain, certain improvements for the purpose of [redacted] (whether one or more, the "**Improvements**") as described in and at the location shown on **Exhibit "A"** but only to the extent shown thereon. Upon completion of the Improvements, Licensee agrees to be responsible for maintaining the Improvements. Licensee shall not expand or otherwise cause the Improvements to further infringe in or on City's Public Right-of-Way beyond what is specifically described in the Exhibit(s) attached hereto.

2.

All construction, maintenance and operation in connection with such Improvements, use and occupancy shall be performed in strict compliance with this Agreement and the City's Charter, Ordinances and Codes, and in accordance with the directions of the City's Director of Transportation and Public Works, or his or her duly authorized representative. Licensee shall submit all plans and specifications to the applicable Director or his or her duly authorized representative prior to the construction of the Improvements. Licensee shall not commence construction of the Improvements until receiving written approval by the Director, but such approval shall not relieve Licensee of responsibility and liability for concept, design and computation in the preparation of such plans and specifications.

3.

Upon completion of the construction and installation of the Improvements, there shall be no other encroachments in, under, on or above the surface area of the Public Right-of-Way, except as described herein and depicted on **Exhibit "A"**.

4.

Licensee, at no expense to the City, shall make proper provisions for the relocation and installation of any existing or future utilities affected by such encroachment, use and occupancy, including the securing of approval and consent from any affected utility companies and the appropriate agencies of the State of Texas and its political subdivisions. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is made more costly by virtue of the construction, maintenance or existence of such encroachment and use, Licensee shall pay to City an additional amount equal to such additional cost as determined in the reasonable discretion of the Director of Transportation and Public Works, or his or her duly authorized representative.

5.

Upon prior written notice to Licensee, except in the case of an emergency, Licensee agrees that City may enter and utilize the referenced areas at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from the Improvements installed by Licensee, but City will make reasonable efforts to minimize such damage. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is

made more costly by virtue of the construction, maintenance or existence of the Improvements and use, Licensee shall pay to City an additional amount equal to such additional cost as reasonably determined by the Director of Transportation and Public Works or the Director of the Water Department, or said Director's duly authorized representative.

6.

Licensee agrees to pay to City at the time this Agreement is requested an application fee of **\$325.00** in order to defray all costs of inspection and supervision which City has incurred or will incur as a result of the construction, maintenance, inspection or management of the encroachments and uses provided for by this Agreement. Licensee agrees to pay a fee in the amount of **\$.56** per square/linear foot of the encroachment area upon execution of this Agreement and annually thereafter.

7.

The term of this Agreement shall be for **30** years commencing on the date this Agreement is executed by City. However, this Agreement shall terminate upon Licensee's non-compliance with any of the terms of this Agreement. City shall notify Licensee in writing of the non-compliance, and if not cured within **30** days, this Agreement shall be deemed terminated unless such non-compliance is not susceptible to cure within **30** days, in which case this Agreement shall be deemed terminated in the event that Licensee fails to commence and take such steps as are necessary to remedy the non-compliance within **30** days after written notice specifying the same, or having so commenced, thereafter fails to proceed diligently and with continuity to remedy same.

8.

Upon termination of this Agreement, Licensee shall at no expense to City remove the Improvements encroaching into the Public Right-of-Way, and restore the Public Right-of-Way to a condition acceptable to the Director of Transportation and Public Works, or his or her duly authorized representative, in accordance with then-existing City specifications. It is understood and agreed by Licensee that if this Agreement terminates and Licensee fails to remove the Improvements and restore the Public Right-of-Way, Owner hereby gives City permission to remove the Improvements along with any supporting structures, restore the Public Right-of-Way, and assess a lien on the Property for the costs expended by the City in taking such actions.

9.

It is further understood and agreed between the parties hereto that the Public Right-of-Way to be used and encroached upon as described herein, is held by City as trustee for the public; that City exercises such powers over the public right-of way as have been delegated to it by the Constitution of the State of Texas or by the Texas Legislature; and that City cannot contract away its duty and its legislative power to

control the Public Right-of-Way for the use and benefit of the public. It is accordingly agreed that if the governing body of City may at any time during the term hereof determine in its sole discretion to use or cause or permit the Public Right-of-Way to be used for any other public purpose, including but not limited to, underground, surface or overhead communication, drainage, sanitary sewerage, transmission of natural gas or electricity, or any other public purpose, whether presently contemplated or not, that this Agreement shall terminate upon **60** days' written notice to Licensee. In the event this Agreement is terminated under this **Section 9**, Licensee shall perform the obligations regarding removing the Improvements and restoring the Public Right-of-Way described in **Section 8**.

10.

Licensee agrees and acknowledges that this Agreement is solely for the purpose of permitting Licensee to construct, maintain and locate the Improvements over or within the described Public Right-of-Way and is not a conveyance of any right, title or interest in or to the Public Right-of-Way nor is it meant to convey any right to use or occupy any property in which a third party may have an interest. Licensee agrees that it will obtain all necessary permissions before occupying such property.

11.

Licensee agrees to comply fully with all applicable federal, state and local laws, statutes, ordinances, codes or regulations in connection with the construction, operation and maintenance of the Improvements, encroachment and uses.

12.

Licensee agrees to pay promptly when due all fees, taxes or rentals provided for by this Agreement or by any federal, state or local statute, law or regulation.

13.

Licensee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant or employee of City, and Licensee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. The doctrine of respondeat superior shall not apply as between City and Licensee, its officers, agents, servants, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

14.

LICENSEE COVENANTS AND AGREES TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, AND ELECTED OFFICIALS FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF THE IMPROVEMENTS AND ENCROACHMENT AND USES GRANTED HEREUNDER, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, ELECTED OFFICIALS, OR INVITEES OF THE CITY; AND LICENSEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR SUCH CLAIMS OR SUITS. LICENSEE SHALL LIKEWISE ASSUME ALL LIABILITY AND RESPONSIBILITY AND SHALL INDEMNIFY CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE IMPROVEMENTS AND ANY AND ALL ACTS OR OMISSIONS OF LICENSEE, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR TRESPASSERS.

15.

While this Agreement is in effect, Licensee agrees to furnish City with a Certificate of Insurance naming City as certificate holder, as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the proposed use and occupancy of public property as described or depicted in **Exhibit "A"**.

The amounts of such insurance shall be not less than

\$1,000,000 Commercial General Liability

with the understanding and agreement by Licensee that such insurance amounts may be revised upward at City's option and that Licensee shall so revise such amounts promptly following notice to Licensee of such requirement. Such insurance policy shall not be canceled or amended without at least **30** days prior written notice to the Building Official of the City of Fort Worth. A copy of such Certificate of Insurance is attached as **Exhibit "B"** and incorporated herein for all purposes. Licensee agrees to submit a similar Certificate of Insurance annually to City on the anniversary date of the execution of this Agreement.

Licensee agrees, binds and obligates itself, its successors and assigns, to maintain and keep in force such public liability insurance at all times during the term of this Agreement and until the removal of all encroachments and the cleaning and restoration of the Public Right-of-Way. All insurance coverage required herein shall include coverage of all Licensees' contractors and subcontractors.

16.

Licensee agrees to deposit with the City when this Agreement is executed a sufficient sum of money to be used to pay the fees to record this Agreement in the Real Property Records of Tarrant County, Texas. After being recorded, the original shall be returned to the City Secretary of the City of Fort Worth.

17.

In any action brought by the City for the enforcement of the obligations of the Licensee, City shall be entitled to recover interest and reasonable attorney's fees.

18.

Licensee covenants and agrees that it will not assign all or any of its rights, privileges or duties under this Agreement without the prior written approval of the City, and any attempted assignment without such written approval shall be void. In the event Licensee conveys the Property, Licensee may assign all of its rights and obligations under this Agreement to the new owner of the Property, and Licensee shall be deemed released from its duties and obligations hereunder upon City's approval in writing of such assignment, which approval shall not be unreasonably conditioned or withheld. Foreclosure by a secured lender of Licensee or assignment to a secured lender by Licensee in the event of default or otherwise shall not require City approval provided that said lender notifies City in writing within **60** days of such foreclosure or assignment and assumes all of Licensee's rights and obligations hereunder. However, no change of ownership due to foreclosure or assignment to any secured lender of Licensee shall be effective as to City unless and until written notice of such foreclosure or assignment is provided to City.

19.

THE PARTIES AGREE THAT THE DUTIES AND OBLIGATIONS CONTAINED IN PARAGRAPH 8 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

20.

Any cause of action for breach of this Agreement shall be brought in Tarrant County, Texas. This Agreement shall be governed by the laws of the State of Texas.

21.

This Agreement shall be binding upon the parties hereto, their successors and assigns.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

STATE OF TEXAS §
COUNTY OF TARRANT §

This instrument was acknowledged before me on _____, 201____
by Randall Harwood, Director of the Planning and Development Department of the City
of Fort Worth, on behalf the City of Fort Worth.

Notary Public, State of Texas

After Recording Return to:
Cassandra Foreman
Planning and Development Department
1000 Throckmorton Street
Fort Worth TX, 76102

STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, _____ (title), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of _____, a _____, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20_____.

Notary Public in and for the
State of _____

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT “A”
Location and Description of Encroachment and Improvements